

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:23-cv-00277-WCM

CATHERINE BRICKEY,)	
<i>individually and as next</i>)	
<i>friend of Timothy Denicola,</i>)	
<i>formerly a minor, and as next</i>)	
<i>friend of T. B., a minor; and</i>)	
TIMOTHY DENICOLA,)	
<i>Individually,</i>)	ORDER
)	
Plaintiffs,)	
v.)	
)	
SD TRANSPORT INC.;)	
JVC ENTERPRISES, LLC; and)	
JAMES MARTIN SANDERS,)	
)	
Defendants.)	
)	

This matter is before the Court on a Consent Motion to Remand (the “Motion to Remand,” Doc. 20) filed by SD Transport, Inc., JVC Enterprises, LLC, and James Martin Sanders (“Defendants”).¹

I. Background

On September 28, 2023, Defendants filed a Notice of Removal, asserting that this Court could exercise federal subject matter pursuant to 28 U.S.C. § 1332. Doc. 1.

¹ The parties have consented to have a United States Magistrate Judge conduct all proceedings in this matter. Doc. 6.

On November 3, 2023, an initial pretrial conference was conducted, and the parties were instructed to file citizenship disclosure statements. The deadline for JVC Enterprises, LLC to file its disclosure statement was subsequently extended through and including November 17, 2023.

On November 17, 2023, Defendants filed the Motion to Remand. Doc. 20. Plaintiffs consent to the requested remand. Id.

II. Discussion

Because Defendants removed this matter, they bear “the burden of proof, by a preponderance of the evidence, to show the parties’ citizenship to be diverse.” Zoroastrian Ctr. & Darb-E-Mehr of Metro. Washington, D.C. v. Rustam Guiv Found. of New York, 822 F.3d 739, 748 (4th Cir. 2016); see also Robb Evans & Assoc., LLC v. Holibaugh, 609 F.3d 359, 362 (4th Cir. 2010) (“The burden of establishing subject matter jurisdiction is on...the party asserting jurisdiction”).

Defendants now acknowledge that they cannot carry this burden. Specifically, Defendants state they “are unable to satisfy the citizenship disclosure requirements relating to Defendant JVC Enterprises, LLC in order to demonstrate diversity for subject matter jurisdiction.” Doc. 20 at 2.

IT IS THEREFORE ORDERED that the Consent Motion to Remand (Doc. 20) is GRANTED, and this matter is REMANDED to the Superior Court of Buncombe County, North Carolina.

Signed: November 20, 2023



W. Carleton Metcalf
United States Magistrate Judge

